

# McDermott Will & Emery

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December 21, 2016

## **BY ELECTRONIC MAIL**

The Honorable Vernon S. Broderick  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

Re: **MDL 1358 (In Re: MTBE)**

Dear Judge Broderick:

Defendants' liaison counsel and counsel for plaintiffs in the *New Jersey, Pennsylvania* and *Puerto Rico* cases recently contacted the Court by telephone to seek the Court's guidance on several questions in connection with the above-referenced matter. As requested by the Court, by this letter both sides submit their respective questions in writing. This letter simply poses the questions with some background explanation; it does not argue either side's respective points in connection with the questions asked.

## **Defendants' Question Regarding Discovery Disputes in *Pennsylvania***

Currently, there are several discovery-related matters before the Court for resolution in the *Pennsylvania* case. These include Defendants' request for the Court's assistance in getting depositions scheduled in accordance with Case Management Order 121 which the parties negotiated and which Judge Scheindlin entered on April 29, 2016. Defendants submitted this and two related discovery issues to the Court by letter dated October 11, 2016. Also before the Court is Plaintiff's related motion of the same date for a protective order, which requests a stay of further depositions by defendants until January 2017.

Moreover, there are several additional, and unresolved, discovery disputes that Defendants intend to raise with the Court by letter/motion in the coming weeks.

Judge Scheindlin previously appointed a Special Discovery Master (Kenneth Warner, Esq.) to hear discovery disputes in the *MDL 1358* cases. *See* Order dated June 18, 2004 (attached). Mr. Warner's appointment remains in place. Defendants seek guidance as to

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whether Your Honor would permit the pending and future discovery disputes to be submitted to Special Master Warner for resolution. Defendants also would be satisfied to bring these disputes to the Court's Magistrate Judge or, as we have been doing, directly to Your Honor.

**Plaintiffs' Questions Regarding Prior Correspondence and Proposed Orders**

(1) Prior Correspondence: Liaison counsel for plaintiffs and defendants sent a letter to the Court on June 28, 2016, providing information as to your former firm Weil, Gotshal & Manges' participation in certain MTBE cases. Counsel for plaintiffs sent a follow up letter the next day providing additional information. Plaintiffs respectfully request confirmation that the Court has received and considered this information.

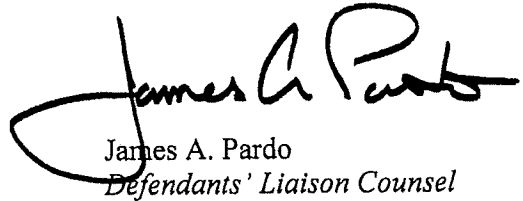
(2) Puerto Rico Unopposed Stipulation and Proposed Order: On August 2, 2016, the parties to the *Puerto Rico* case submitted a stipulation and proposed order regarding the record on remand in that case. Plaintiffs are prepared to respond to any questions the Court may have regarding the stipulation, but, barring such, request that the proposed order be signed so that the remanded case may proceed to trial in the District of Puerto Rico.

(3) New Jersey Unopposed Motion and Proposed Order: On June 28, 2016, plaintiffs in *New Jersey* submitted to the Court an unopposed motion and proposed order to amend the complaint. Plaintiffs are prepared to respond to any questions the Court may have regarding that unopposed motion, but, barring such, respectfully request that the proposed order be signed so the case may proceed under the amended complaint.

Respectfully submitted,

/s/ Michael Axline

Michael Axline  
Counsel for Plaintiffs

  
James A. Pardo  
Defendants' Liaison Counsel

cc: All Counsel of Record (by LNFS)